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*Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108*

Advisory Opinion

January 7, 2002
AO-02-02

John D. Keenan, Esq.
222 Essex Street
Salem, MA 01970

Re: Campaign activities by candidate who is public employee

Dear Mr. Keenan:

This letter is in response to your December 21, 2001 request for an advisory opinion.

You have stated that you serve as City Solicitor for the City of Salem and that you understand that you are considered a municipal employee for purposes of the campaign finance law.¹ You are considering becoming a candidate for state office. You understand that you cannot solicit campaign contributions yourself and that you cannot use city time or property for campaign purposes. You also acknowledge that you will need a political committee to raise funds on your behalf.

You have asked several questions relating to Section 13 of the campaign finance law, which prohibits persons employed for compensation by the Commonwealth or any of its subdivisions, other than elected officers, from directly or indirectly soliciting or receiving campaign funds on behalf of a candidate, political committee or for any other political purpose.

QUESTIONS

(1) May your wife (or any other family member) serve as treasurer of your campaign?

Answer: Yes. Solicitation and receipt of contributions by a family member of a public employee does not automatically implicate concerns under Section 13. Section 13 is directed at the conduct of the

¹ We assume for purposes of this opinion that you are a public employee subject to Section 13 of Chapter 55. Under some circumstances, attorneys providing legal services to municipalities are considered independent contractors for purposes of the statute and as such are not subject to the provisions of Section 13. See AO-91-03 and AO-01-04.

public employee. This answer assumes, however, that your wife or other family member is not a public employee subject to the restrictions of Section 13.

(2) May your wife (or any other family member) solicit contributions?

Answer: Yes, if your wife or other family member is not a public employee subject to Section 13. You should note, however, that issues under the campaign finance law may be raised if your wife or another family member holds a fundraising event in your home. See AO-94-26, in which the office concluded that the mere fact that a public employee non-candidate is one of the joint owners of a home should not bar the other owner, a non-public employee, from holding a political fundraiser in that home. In contrast to the situation discussed in AO-94-26, however, if the public employee co-owner *is the candidate*, a fundraiser to benefit the candidate should not be held in the jointly owned home. Such an event would be deemed to involve indirect solicitation on the public employee's part.

(3) May you attend and speak at a fundraiser held on your behalf?

Answer: Yes. The office has also stated that an appointed public employee-candidate may attend functions, including fundraisers, on behalf of his candidacy, during non-working hours. See AO-92-03. A public employee may also speak at such an event about matters other than political fundraising, even if someone else thereafter discusses fundraising. You will need to be careful to ensure that you do not directly or indirectly solicit contributions. See AO-86-10.

(4) Are there are "other issues of potential concern regarding fundraising?"

Answer: Yes. The enclosed interpretive bulletin IB-92-01 and Campaign Finance Guide: *Public Employees, Public Resources and Political Activity* summarize the restrictions that appear most relevant to your situation.

One restriction worth discussing here is the second sentence of Section 13 of Chapter 55, which states that a political committee organized on behalf of an appointed public employee may not solicit or receive contributions from:

any person or combination of persons if [the public employee/candidate] knows or has reason to know that the person or combination of persons has an interest in any particular matter in which [the public employee/candidate] participates or has participated in the course of such employment or which is the subject of his official responsibility.

The campaign finance law does not define the terms "participate" or "official responsibility." The second sentence of Section 13 is, however, a conflict-of-interest provision and identical terms are defined in M.G.L. c. 268A. In that statute, "official responsibility" is defined, in part, as "the direct administrative or operating authority . . . to approve, disapprove or otherwise direct agency action." Similarly, "participate" means to "participate in agency action or in a particular matter personally and substantially as a[n]. . . employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise."

Consistent with these definitions, this office has advised that an assistant district attorney and his political committee may not solicit or receive contributions from attorneys and clients who have had matters in which the assistant district attorney participated. See AO-82-01. See also AO-94-14, which

states that a candidate who served as assistant counsel to a state regulatory board may not solicit or receive contributions from persons (or controlling persons of corporate entities) that had matters before the board.

Therefore, your committee may not solicit or receive contributions from any person or entity involved in a matter in which the City Solicitor's office is participating. In addition, the committee may not solicit or receive contributions from a person or entity previously involved in such a matter at the time you served as City Solicitor, or from any attorney who represented or represents such person or entity.

Another restriction to be aware of includes Section 14 of Chapter 55, which prohibits anyone from soliciting or receiving political contributions in a building occupied for state, county or municipal purposes.

This office appreciates your interest in M.G.L. c. 55, the campaign finance law. The guidance in this letter is limited in scope to that statute and is based on your letter. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

You should contact the State Ethics Commission at 617-727-0060 to ensure compliance with M.G.L. c. 268A.

Please contact us if you have further questions regarding this matter.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director